IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1117 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JYOTI ENGINEERING WORKS

Versus

AYOOB ABDUL GAFAR KUDIA

Appearance:

1. Civil Revision Application No. 1117 of 1997

MR SURESH M SHAH for Petitioner No. 1-4

MR MEHUL S SHAH for Petitioner No. 1-4

MR SANDEEP N BHATT for Respondent No. 1-9

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/03/2004

ORAL JUDGEMENT

The petitioners herein are the original defendants of Regular Civil Suit No.140/1984. The

present respondents have filed the aforesaid suit. The said suit was dismissed by the trial Court vide its judgement and order dated 20-10-1995. The respondents herein carried the matter by way of an appeal under Section 96 of C.P.C., being Regular Civil Appeal No.21/1996, which is pending before the appellate Court at Gondal. In the said appeal, the present respondents submitted an application for interim injunction. The learned Extra Assistant Judge, Gondal by his order dated 30th July, 1997, allowed the said application Exh.5, and granted injunction restraining the defendants from making permanent construction in the suit premises till the final disposal of the said appeal.

2) Mr.Shah, learned advocate for the petitioners submitted that even though the trial Court has dismissed the suit, by virtue of said injunction the petitioners are restrained from making any construction in the suit property. He submitted that such type of injunction should not have been granted against the petitioners.

3) On the other hand, Mr.Bhatt pointed out that in view of the amendment in Section 115 of C.P.C. this revision is not maintainable.

4) It is no doubt true that this Civil Revision Application is filed against an interlocutory order as the main appeal is still pending and, therefore, the same is not maintainable.

5) Mr.Shah has submitted that the appeal is pending since 1996 and that such appeal is required to be disposed of forthwith, as the petitioners are suffering immensely because of the injunction granted by the appellate Court, even though they have succeeded before the trial Court. Considering the fact that the appellate Court has granted injunction against the petitioners while entertaining appeal, it would be just and proper to direct the appellate Court to dispose of the said appeal at the earliest. Under these circumstances the following order is passed :

6) This Civil Revision Application is rejected as the same is not maintainable in view of the amendment in Section 115 of C.P.C. However, the learned Extra Assistant Judge, Gondal, is directed to decide Civil Appeal No.21/1996 at the earliest and the same may be disposed of latest by 31st December, 2004. As this is an outer limit, the learned Judge may try to dispose of the same even earlier than that time. Both the sides have assured the Court that they will cooperate in earlier

disposal of the appeal. It is clarified that whatever observations made by the appellate Court while deciding Exh.5 application may not be taken into consideration while deciding the appeal as the same are only tentative observations.

7) Subject to above directions, this Civil Revision Application is disposed of. Rule is discharged. No order as to costs.

8) Writ to be sent to the appellate Court forthwith for early disposal of the appeal.

(P.B.Majmudar,J.)
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